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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE CEMETERY AND FUNERAL BUREAU**
STATE OF CALIFORNIA

10
11 In the Matter of the Statement of Issues
12 Against:

Case No. A1 2017 354

13 **JEANNIE TINGLEW**

STATEMENT OF ISSUES

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

17 1. Lisa M. Moore (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer
19 Affairs.

20 2. On or about October 2, 2017, the Cemetery and Funeral Bureau received an
21 application for a Cemetery Salesperson license from Jeannie TingLew (Respondent). On or about
22 October 2, 2017, Jeannie TingLew certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Bureau denied the application on
24 December 1, 2017.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Director of Consumer Affairs
27 (Director) for the Cemetery and Funeral Bureau, under the authority of the following laws. All
28 section references are to the Business and Professions Code unless otherwise indicated.

STATUTES AND REGULATIONS

4. Section **480** of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

...

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

...

5. Section **490** of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

1 (b) Notwithstanding any other provision of law, a board may exercise any authority to
2 discipline a licensee for conviction of a crime that is independent of the authority granted under
3 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
4 of the business or profession for which the licensee's license was issued.

5 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
6 conviction following a plea of nolo contendere. Any action that a board is permitted to take
7 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
8 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under the
10 provisions of Section 1203.4 of the Penal Code.

11 (d) The Legislature hereby finds and declares that the application of this section has been
12 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
13 554, and that the holding in that case has placed a significant number of statutes and regulations
14 in question, resulting in potential harm to the consumers of California from licensees who have
15 been convicted of crimes. Therefore, the Legislature finds and declares that this section
16 establishes an independent basis for a board to impose discipline upon a licensee, and that the
17 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
18 constitute a change to, but rather are declaratory of, existing law.

19 6. Section 7611.3 of the Code states:

20 A cemetery salesperson is a natural person who, other than in reference to an occasional
21 sale, is employed by a cemetery broker to sell, or offer for sale, list or offer to list, or to buy, or to
22 offer to buy, or to lease, or offer to lease, or to solicit, or to negotiate the purchase or sale or lease
23 or exchange of cemetery property or interment services, or any interest therein, for his or her own
24 account or for another.

25 7. Section 7611.7 of the Code states:

26 "Cemetery licensee" means any cemetery broker, cemetery salesperson, or cemetery
27 manager.

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1 8. Section **7651.5** of the Code states:

2 The bureau shall investigate the qualifications of the applicants. Except as otherwise
3 prescribed in this article, it may issue the license applied for to an applicant on a showing
4 satisfactory to it that the following facts exist:

5 (a) The applicant is properly qualified to perform the duties of a cemetery broker or
6 salesperson.

7 (b) Granting the license will not be against public interest.

8 (c) The applicant intends actively and in good faith to carry on the business of a cemetery
9 broker or a cemetery salesperson.

10 (d) In the case of a corporate applicant, the articles of incorporation permit it to act as a
11 cemetery broker.

12 (e) In the case of an association or copartnership applying for such a license, its articles of
13 association or agreement of partnership authorize it to act as a cemetery broker.

14 (f) The license is not being secured for the purpose of permitting the applicant to advertise
15 as a cemetery broker or salesperson without actually engaging in such business.

16 (g) The applicant has not committed acts or crimes constituting grounds for denial of
17 licensure under Section 480.

18 9. Section **7691** of the Code states:

19 Conviction of a crime substantially related to the qualifications, functions and duties of the
20 license holder in question constitutes a ground for disciplinary action. The record of conviction,
21 or a certified copy thereof, shall be conclusive evidence of such conviction.

22 10. Section **7709** of the Code states:

23 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
24 be a conviction within the meaning of this article. The bureau may order the license suspended or
25 revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment
26 of conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
28 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter

1 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
2 or indictment.

3 11. Section **7711.3** of the Code states:

4 The bureau may suspend or revoke the license of any cemetery licensee who, within the
5 immediately preceding three years, has done any of the following:

6 (a) Been convicted of a crime substantially related to the qualifications, functions, and
7 duties of such licensee. The record of conviction, or a certified copy thereof, shall be conclusive
8 evidence of such conviction.

9 (b) Knowingly authorized, directed, connived at, or aided in the publication, advertisement,
10 distribution, or circulation of any material false statement or representation concerning his or her
11 business or any cemetery property offered for sale.

12 (c) Willfully disregarded or violated any of the provisions of this act relating to cemetery
13 brokerage.

14 (d) Acted or conducted himself or herself in a manner which would have warranted the
15 denial of his or her application for a cemetery license, or for a renewal thereof.

16 12. California Code of Regulations, Title 16, section **2330**, states:

17 For the purposes of denial, suspension or revocation of a license pursuant to Division 1.5
18 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially
19 related to the qualifications, functions or duties of a cemetery broker or salesperson if to a
20 substantial degree it evidences present or potential unfitness of a cemetery broker or salesperson
21 to perform the functions authorized by his or her license in a manner consistent with the public
22 health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving
23 the following:

24 (a) Conviction of a crime involving fiscal dishonesty.

25 (b) Any violation of the provisions of Chapter 19, Division 3 of the Code.

26 13. California Code of Regulations, Title 16, section **2331**, states:

27 (a) When considering the denial of a license under Section 480 of the Code, the bureau, in
28 evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will

1 consider the following criteria:

2 (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for
3 denial.

4 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
5 consideration as grounds for denial which also could be considered as grounds for denial under
6 Section 480 of the Code.

7 (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in
8 subdivisions (1) and (2).

9 (4) The extent to which the applicant has complied with any terms of parole, probation,
10 restitution, or any other sanctions lawfully imposed against the applicant.

11 (5) Evidence, if any, of rehabilitation submitted by the applicant.

12 (b) When considering the suspension or revocation of a license on the ground that a
13 cemetery broker or salesperson has been convicted of a crime, the bureau, in evaluating the
14 rehabilitation of such person and his or her eligibility for a license, will consider the following
15 criteria:

16 (1) Nature and severity of the act(s) or offense(s).

17 (2) Total criminal record.

18 (3) The time that has elapsed since commission of the act(s) or offense(s).

19 (4) Whether the licensee has complied with any terms of parole, probation, restitution or
20 any other sanctions lawfully imposed against the licensee.

21 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
22 Penal Code.

23 (6) Evidence, if any, of rehabilitation submitted by the licensee.

24 (c) When considering a petition for reinstatement of a license under the provisions of
25 Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation
26 submitted by the petitioner considering those criteria specified in subsection (a).

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 (Criminal Conviction)

3 14. Respondent's application is subject to denial under Code sections 480(a)(1),
4 480(a)(3)(A), 490(a) and 9727(a), in that Respondent has been convicted of a crime substantially
5 related to the qualifications, functions and duties of a licensee. The circumstances are as follows:

6 15. On or about January 22, 2014, in Santa Clara Superior Court case number C1363035,
7 Respondent was convicted of having violated California Penal Code section 484 (petty theft).
8 The conviction was based on an incident that occurred on or about July 3, 2013, during which
9 Respondent committed theft at a Home Depot store. At the time of her arrest, Respondent
10 admitted that she had stolen items from Home Depot on multiple other occasions amounting to a
11 value of about \$300.00.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 (Acts of Dishonesty)

14 16. Respondent's application is subject to denial under Code sections 480(a), subsections
15 (2) and (3), in that she has committed acts involving dishonesty, fraud or deceit with the intent to
16 substantially benefit himself or herself or another, or substantially injure another, as set forth in
17 paragraph 14.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Director of Consumer Affairs issue a decision:

- 21 1. Denying the application of Jeannie TingLew for a Cemetery Salesperson license;
22 2. Taking such other and further action as deemed necessary and proper.

23
24 DATED: May 9, 2018

Lisa M. Moore
LISA M. MOORE
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant